

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SYSCO SAN FRANCISCO, INC.
Employer

and

Case 32-RC-282877

TEAMSTERS LOCAL 853
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Report on Challenged Ballot and Order Directing Opening and Counting Challenged Ballot is denied as it raises no substantial issues warranting review.¹

LAUREN McFERRAN,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
GWYNNE A. WILCOX,	MEMBER

Dated, Washington, D.C., March 24, 2022.

¹ In denying review, we note that the Regional Director acted in accordance with long-established Board and court precedent by opening and counting employee Karen Hankermeyer's determinative ballot. See, e.g., *Marie Antoinette Hotel*, 125 NLRB 207, 208 (1959) (the disclosure of an employee's vote may be "an unavoidable result of the challenge procedure" and does not invalidate her ballot); see also *Int'l Union of Elec., Radio and Mach. Workers, AFL-CIO v. NLRB*, 418 F.2d 1191, 1202 (D.C. Cir. 1969).

Contrary to his colleagues, Member Kaplan would grant review and order a rerun election in order to preserve the secrecy of employee Karen Hankermeyer's vote. In his view, allowing a single challenged (and determinative) ballot to be opened seriously undermines the very foundation of Board elections--the secret ballot--because the secrecy of that employee's vote will necessarily be destroyed. He is also concerned that such practice could affect employees' confidence in the secrecy of their vote and therefore deter them from exercising their right to vote for or against representation in future elections. Accordingly, he would overrule Board precedent, including *Marie Antoinette Hotel*, 125 NLRB 207, 208 (1959), and *DeVilbiss Co.*, 115 NLRB 1164, 1169 (1956), to the extent that it stands for the proposition that it is appropriate to open a single challenged ballot.